IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.640 of 2006

Priya ... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The District Collector-cum-
District Magistrate,
Vellore District,
Vellore-9. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records relating to the detention order passed by the second respondent in C3.D.O.NO.48/2006 dated 03.05.2006, quash the same and to direct the second respondent herein to produce the body of the detenu Mohan S/o V.K.Gupta, who is confined in Central Prison, Vellore and set him at liberty.

For Petitioner : Mrs.R.Subathra Devi
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the wife of the detenu, by name G.Mohan, who is detained as a ''Video Pirate" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 03.05.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, the learned counsel appearing for the petitioner has submitted that the representation dated 11.05.2006 made by the wife of the detenu was not properly considered and on this ground, the detention order is liable to be quashed. While elaborating the above contention, the learned counsel has pointed out that even in the second sentence of the reply dated 31.05.2006 sent by the Prohibition and Excise Department, Fort St. George, Chennai-9, it is specifically stated that ..."தடுப்பு காவல் சிறைவாசி ஏற்கனவே ஒரு குற்றத்தில் கள்ளச்சாராய வழக்குகளில் ஈடுபட்டுள்ளார்". According to the learned counsel, there is no material with regard to the same and in the absence of sufficient material for the same, it is presumed that the Government have not properly considered the representation dated 11.05.2006 sent by the wife of the detenu.

4. In the light of the said contention, we have verified the original file relating to the detention order. It is not in dispute that the representation was made by one Priya, the wife of the detenu on 11.05.2006. On consideration, the Government (Prohibition and Excise Department) had sent a reply on 31.05.2006. The original reply, which was duly signed by the authority concerned, is available at page 153 of the file. In the original reply it is mentioned that ..."தடுப்பு காவல் சிறைவாசி ஏற்கனவே ஒரு குற்றத்தில் ஈடுபட்டுள்ளார்".... The original also shows that ..."கள்ளச்சாராய வழக்குகளில்".... has been scored in ink. However the typed copy of the reply, which was sent to the detenu as well as his wife, viz., Priya, who made a representation on 11.05.2006, makes it clear that the detenu had involved in one criminal case viz., prohibition offence. As rightly pointed out by the learned counsel for the petitioner it amply shows that though in the original there is no reference to prohibition offence, in the typed written copy intended for service to the person, who made the representation as well as to the detenu, there is a specific reference to one prohibition offence. Admittedly the person concerned/department at the Government level has not filed a counter affidavit explaining the same. Curiously, the second respondent viz., The District Magistrate and District Collector, Vellore District, has filed a counter affidavit dated ..August, 2006. In paragraph 11 of the counter, the District Magistrate and District Collector has explained as follows:

> "Regarding the averments in Para E of the grounds of the affidavit, it is not correct to state that the rejection order dated 31.05.2006 is passed without application of mind, as the same reads "illicit Arrack" instead of Video Pirate. In fact, the representation was considered in detail when the rejection order was passed, by oversight and as a type error while typing in the computer instead of typing as Video Pirate, it has been mistakenly typed as "Illicit Arrack". So by such small type error in a document which came into existence subsequent to the

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passing of the detention order, cannot be termed that the detaining authority has passed the detention order without application of the mind."

5. A reading of the above information given by the District Collector makes it clear that the offence relating to "illicit arrack" has been wrongly typed instead of "Video Pirate". Admittedly, reply was made by the Government, i.e. Prohibition and Excise Department, which is the authorised Department to deal with this matter. We have already observed that no such explanation from the concerned Department at the Government level. In such circumstances, we are unable to appreciate as to how the District Collector is conversent with the affairs of the Department of the Government and explained that the same is typographical error.

6. We are satisfied that the District Magistrate/District Collector is not competent to explain the reply dated 31.05.2006 given by the Government (Prohibition and Excise Department). In such circumstances, we are unable to accept the explanation offered by the District Collector. In fact, we presume that the District Collector has not specifically verified the averment in para E of the grounds as well as the reply dated 31.05.2006 sent by the Prohibition and Excise Department, Government of Tamil Nadu, Fort St. George, Chennai-9. In a matter like this, the officer owes more responsibility and he is expected to verify all the records and satisfied with the facts and figures before affixing his signature and he cannot mechanically approve and sign the affidavit without applying his mind with reference to the facts and details.

7. In the light of what is stated above, we accept the contention raised by the learned counsel for the petitioner and we are satisfied that the representation dated 11.05.2006 was not properly considered and the rejection letter dated 31.05.2006 amply shows non application of mind on the part of the Government and on this ground, we quash the impugned order of detention.

8. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2. The District Collector and District Magistrate, Vellore District, Vellore.

3. The Superintendent, Central Prison, Vellore.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

1 cc To M/S.R.Subadradevi, Advocate, SR.42103.

HCP. No.640 of 2006

JP(CO)
RVL 21.09.2006

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